

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

David S. Day,

Complainant,

vs.

State Senator Michael Jungbauer,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER**

The above-entitled matter came on for an evidentiary hearing on October 17, 2006, before a panel of three Administrative Law Judges: Barbara L. Neilson (Presiding Judge), Beverly Jones Heydinger, and Cheryl LeClair-Sommer. The hearing record closed at the conclusion of the hearing that day.

David Day, 421 Rice Street, Anoka, MN 55303, appeared on his own behalf without counsel. Matthew W. Haapoja, Attorney at Law, Trimble & Associates, Ltd., 10201 Wayzata Boulevard, Suite 130, Minneapolis, MN 55305, appeared on behalf of Senator Michael Jungbauer (Respondent).

NOTICE

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

STATEMENT OF ISSUES

1. Did Respondent violate Minnesota Statutes § 211B.12(7) by making expenditures that were not reasonably related to the conduct of Respondent's election campaign, or that were spent on assets converted to personal use?

The panel concludes that the Complainant has failed to establish by a preponderance of the evidence that the Respondent's expenditure on insurance for his February 22, 2006, fundraising event violated Minn. Stat. § 211B.12(7). This allegation is dismissed.

The panel concludes that the Complainant has established that the Respondent's expenditures on airplane models violated Minn. Stat. § 211B.12(7).

2. Did Respondent violate Minn. Stat. § 211B.15 by accepting a \$600 contribution from Anoka Air Charters, Inc.?

The panel concludes that the Complainant failed to establish that Respondent violated Minn. Stat. § 211B.15, and therefore this allegation is dismissed.

Based upon the entire record, the panel makes the following:

FINDINGS OF FACT

1. Michael Jungbauer is a Minnesota State Senator representing District 48. Mr. Jungbauer was first elected in 2002. He is running for re-election in the November 7, 2006, General Election.

2. Minnesota Senate District 48 covers portions of Anoka and Sherburne Counties, and includes the cities of Elk River, East Bethel, Ramsey and Oak Grove.

3. Senator Jungbauer has an interest in aviation issues and owns his own plane, which he keeps at a hangar at the Anoka County Airport. Through his aviation interest and time spent at the Anoka County Airport, Senator Jungbauer has made a number of friends in the aviation community.¹ Members of this community, particularly owners of small planes, have met with Senator Jungbauer during the legislative session to discuss issues concerning the Metropolitan Airports Commission (MAC) and rising hangar rental fees.²

4. Jamie Gunderson volunteered as Senator Jungbauer's campaign manager from approximately October 2005 until July 2006. She served as a deputy treasurer for the campaign from approximately December 2005 through at least May 2006. Prior to joining Senator Jungbauer's campaign, Ms. Gunderson worked for the Minnesota Senate Republican Caucus. Apart from participating in campaign literature "drops" for other candidates, Ms. Gunderson had little prior campaign experience. However, she was aware that a campaign committee was prohibited from accepting corporate contributions.³

5. As Senator Jungbauer's campaign manager and deputy treasurer, Ms. Gunderson helped plan and organize fundraising events and other campaign related appearances. She also was responsible for preparing the campaign finance reports and keeping account of campaign expenditures and contributions. Occasionally, Ms. Gunderson deposited contribution checks into Senator Jungbauer's campaign account.⁴

6. Ms. Gunderson prepared Senator Jungbauer's campaign finance report for 2005, but she did not prepare the report for 2006.⁵

7. As part of his re-election efforts, Senator Jungbauer asked Harvey Karth and Tim Loth, members of the aviation community, if they would be interested in holding a fundraiser on behalf of his campaign.⁶ Both Mr. Karth and

¹ Testimony of M. Jungbauer.

² Testimony of M. Jungbauer.

³ Testimony of Gunderson.

⁴ Testimony of Gunderson.

⁵ Testimony of Gunderson.

⁶ Testimony of M. Jungbauer.

Mr. Loth agreed to do so, and with the help of Paul Weske, another member of the aviation community, they began to plan a fundraising event.⁷

8. Greg Herrick owns a hangar at the Anoka County Airport out of which he operates the Golden Wings Museum. Mr. Herrick has occasionally marketed the museum as an event center to be rented for parties or other occasions. Craig Schiller manages the museum.⁸

9. Mr. Loth and Mr. Weske both have hangars at the Anoka County Airport and know Mr. Herrick. They asked Mr. Herrick if they could hold a fundraiser for Senator Jungbauer's campaign at the Golden Wings Museum. Mr. Herrick agreed to allow the fundraiser to be held at his museum free of charge. However, as a precondition to using the space, Senator Jungbauer's campaign committee was required to purchase liability insurance for the event.⁹

10. Ms. Gunderson helped organize the fundraising event at the Golden Wings Museum.¹⁰

11. Harvey Karth contacted his homeowner's insurance company, Star Insurance Agency, and obtained a quote of \$712 for the required "liability and host liquor" insurance.¹¹ Jamie Gunderson wrote out a check for the insurance on February 22, 2006, in the amount of \$712 from the personal checking account she shares with her husband, Eric Gunderson.¹² On that same date, Jamie Gunderson received a check made out to her husband, Eric Gunderson, written on Senator Jungbauer's campaign committee account in the amount of \$812. The check was a reimbursement for the insurance payment and campaign mileage costs Ms. Gunderson had incurred in the amount of \$100.¹³ Once signed, the insurance documents were faxed to the Golden Wings Museum.¹⁴

12. On February 22, 2006, the fundraiser for Senator Jungbauer's campaign was held at the Golden Wings Museum. Approximately 30 to 40 people attended the event. The event started at about 6:00 p.m. and lasted approximately three hours.¹⁵

13. Michael Hayes is the owner of Anoka Air Charters, Inc., which operates out of the Anoka County Airport. Anoka Air Charters, Inc. is a domestic corporation registered with the Minnesota Secretary of State's Office. Senator

⁷ Testimony of M. Jungbauer and Karth.

⁸ Testimony of Schiller.

⁹ Testimony of Gunderson and M. Jungbauer; Ex. 9.

¹⁰ Testimony of Gunderson.

¹¹ Testimony of Karth; Exs. 7 and 8.

¹² Ex. 6.

¹³ Ex. 5.

¹⁴ Ex. 7.

¹⁵ Testimony of M. Jungbauer, Hayes, and Gunderson.

Jungbauer has met with Mr. Hayes six or eight times on issues concerning the MAC and hangar rental fees.¹⁶

14. Mr. Hayes attended the fundraiser for Senator Jungbauer's campaign. On the evening of February 22, 2006, Mr. Hayes did not have his personal checkbook with him, so he took a corporate check to bring to the fundraiser. At the fundraiser, Mr. Hayes stopped at the welcome table staffed by Senator Jungbauer's volunteers, Jamie Gunderson and Tim Eng. Mr. Hayes handed one of the volunteers the check from his corporate checking account, which was made out to Senator Jungbauer's campaign in the amount of \$600. Senator Jungbauer's volunteer put the check in an envelope with the other checks received. The volunteer, either Ms. Gunderson or Mr. Eng, wrote out a "political contribution receipt" for the \$600 contribution listing Anoka Air Charters Inc. as the contributor and handed the receipt to Mr. Hayes.¹⁷

15. Senator Jungbauer has on occasion signed blank "political contribution receipts" in advance of a fundraising event.¹⁸ The record in this case did not establish who initialed or signed the receipt for Anoka Air Charter's February 22, 2006, contribution, but neither Senator Jungbauer nor Ms. Gunderson denied that the receipt was issued.¹⁹

16. Mr. Hayes was not aware that Minnesota law prohibits corporations from making contributions to candidates or their committees.²⁰

17. Senator Jungbauer never asked Mr. Hayes to make a corporate contribution and not until approximately September 7, 2006, was he aware that Mr. Hayes in fact had done so. Senator Jungbauer did not see the corporate check during the evening of the February 22, 2006, fundraiser or at any other time prior to approximately September 7, 2006.

18. Senator Jungbauer has on occasion had corporate checks delivered unsolicited to his home or campaign office. On those occasions, Senator Jungbauer or a volunteer has returned the checks to the contributors along with a letter explaining that such contributions are prohibited under Minnesota law and suggesting that a personal contribution instead be provided.²¹

19. On February 24, 2006, Ms. Gunderson deposited \$4,530 into Senator Jungbauer's campaign account. This amount reflected the contributions received at the February 22, 2006, fundraiser, as well as at a separate fundraiser

¹⁶ Testimony of M. Jungbauer.

¹⁷ Testimony of Hayes and Gunderson; Ex. 3.

¹⁸ Testimony of Jungbauer.

¹⁹ Testimony of M. Jungbauer and Gunderson; Ex. 3.

²⁰ Testimony of Hayes.

²¹ Testimony of Jungbauer.

held at O’Gara’s restaurant on February 21, 2006. There was no endorsement on the checks submitted for deposit.²²

20. Sometime in July of 2006, Ms. Gunderson quit her position with the Jungbauer campaign and went to work for another candidate running for U.S. Congress.²³

21. Beginning in approximately August of 2006, Patty Olson, a certified public accountant, began handling the financial and bookkeeping matters for Senator Jungbauer’s campaign.²⁴

22. Sometime in August of 2006, Ms. Gunderson received a voicemail message from Senator Jungbauer asking for his campaign documents. On or about August 17, 2006, Ms. Gunderson dropped off a box of documents and computer disks of information relating to Senator Jungbauer’s campaign with a staff person of the Senate Victory Fund, an organization that works on behalf of Republican candidates. That staff person then delivered the documents and computer disks to Senator Jungbauer.²⁵

23. Senator Jungbauer’s campaign finance report for the period covering January 1, 2006, through August 21, 2006, was required to be filed with the Campaign Finance and Public Disclosure Board on August 29, 2006.²⁶

24. On the day the campaign report was due to be filed, Ms. Olson was entering data into the report using a computer software program provided by the Campaign Finance and Disclosure Board. After she had entered all of the information, the software program flagged a number of possible errors contained in the report. One of the errors identified by the software program was that the campaign finance report had listed receipt of a \$600 corporate contribution. Ms. Olson called Senator Jungbauer and informed him that the campaign report software had indicated receipt of a prohibited corporate contribution. Because the report was due that same day, Senator Jungbauer directed Ms. Olson to go ahead and submit the report electronically. He did not review the report, but assumed that the corporate contribution receipt flagged by the software was simply the result of an error made in entering the data. Because the report asks for the identity of the contributor as well as the contributor’s employer, Senator Jungbauer assumed that the contributor and employer information had been mistakenly transposed.²⁷

25. On or about August 30, 2006, Senator Jungbauer received a call from a staff person at the Campaign Finance and Public Disclosure Board

²² Testimony of M. Jungbauer and Gunderson; Ex. 4.

²³ Testimony of Gunderson.

²⁴ Testimony of M. Jungbauer.

²⁵ Testimony of Gunderson and M. Jungbauer.

²⁶ Testimony of M. Jungbauer; Ex. 13.

²⁷ Testimony of M. Jungbauer.

informing him of problems with the report, including the receipt of a corporate contribution from Anoka Air Charter, Inc. Senator Jungbauer informed the Board staff person that he would look into the identified problems, including the corporate contribution.²⁸

26. On September 7, 2006, Senator Jungbauer obtained and reviewed a copy of the \$600 check made out to his campaign committee from Anoka Air Charter. Once he received a copy of the check, Senator Jungbauer called Mr. Hayes and told him that he would reimburse Anoka Air Charter for its contribution since corporate contributions are prohibited under Minnesota law. Senator Jungbauer wrote out a check for \$600 from his campaign committee account to Anoka Air Charter on September 7, 2006, and delivered it to Mr. Hayes that day.²⁹

27. Mr. Herrick, the owner of the Golden Wings museum, also owns a business called Historic Sales, which sells model airplanes.³⁰

28. On May 13th and May 15, 2006, Senator Jungbauer used campaign funds to purchase a total of 14 model airplanes from Historic Sales of New Brighton for a total cost of \$741.39.³¹ The airplane models were sold to Senator Jungbauer at a 40- to 50-percent “collector’s” discount.³²

29. After purchasing the airplane models, Senator Jungbauer took some of the models out of their packaging at his Senate office and put them on display at a couple hangars.³³

30. Ms. Gunderson was unaware of the airplane model purchases and at no time did Senator Jungbauer discuss with her any plans to auction off airplane models at a future fundraiser.³⁴

31. Senator Jungbauer’s August 2006 campaign finance report listed the May 13 and 15, 2006, expenditures on airplane models. The expenditures were described as “other miscellaneous spending airplane models,” and the total amount of the expenditures was listed as \$741.39.³⁵

32. In early September 2006, Senator Jungbauer was asked by a reporter for a local on-line political publication to explain his campaign’s expenditures on airplane models. Senator Jungbauer stated that he believed the reference to “airplane models” was simply a mischaracterization in his campaign

²⁸ Testimony of M. Jungbauer.

²⁹ Testimony of M. Jungbauer and Hayes; Ex. 2.

³⁰ Testimony of M. Jungbauer.

³¹ Testimony of M. Jungbauer; Ex. 10.

³² Testimony of M. Jungbauer.

³³ Testimony of M. Jungbauer.

³⁴ Testimony of Gunderson.

³⁵ Ex. 13.

report possibly caused by the fact that the owner of Historic Sales also owns the hangar in which the February 22, 2006, fundraiser was held.³⁶

33. When asked the same question about the airplane model expenditures in mid-September 2006, by another reporter for an on-line political publication, Senator Jungbauer explained that the model airplanes “were used as silent auction gifts for fundraisers” for his campaign.³⁷

34. In a letter dated September 19, 2006, to the Campaign Finance and Public Disclosure Board, Senator Jungbauer explained that his campaign payments to Historic Sales “were for airplane models we will use for a silent auction at a future fundraising event to raise proceeds for my campaign committee.” Senator Jungbauer further stated in the letter that he is not using the models personally and “they are presently in storage until the auction is held.”³⁸

35. As of the date of the hearing, which was held three weeks before the general election, Senator Jungbauer had not scheduled a fundraising event to auction off the airplane models.³⁹

36. By failing to schedule an auction to recoup the cost of the airplane models, by opening the boxes in which the models were purchased, and by displaying the models in airplane hangars, Senator Jungbauer has converted the airplane models to personal use.

Based upon the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS

1. Minn. Stat. § 211B.35 authorizes the panel of Administrative Law Judges to consider this matter.

2. The burden of proving the allegations in the complaint is on the Complainant and the standard of proof is preponderance of the evidence.⁴⁰

3. Minn. Stat. § 211B.15, subd. 2, prohibits corporations from making a contribution of money or thing of monetary value to a committee or individual to promote or defeat the candidacy of an individual for nomination, election, or appointment to a political office. Subdivision 2 is directed at corporations; it does not prohibit individuals from accepting corporate contributions.

4. Minn. Stat. § 211B.15, subd. 13, prohibits individuals from “aiding, abetting, or advising” a violation of Section 211B.15.

³⁶ Testimony of M. Jungbauer; Ex. 14.

³⁷ Ex. 15.

³⁸ Ex. 11.

³⁹ Testimony of M. Jungbauer.

⁴⁰ Minn. Stat. § 211B.32, subd. 4.

5. The Complainant has failed to establish that Respondent violated Minn. Stat. § 211B.15, subd. 2, by aiding, abetting or advising a violation of Minn. Stat. § 211B.15. The Complainant failed to establish that the Respondent had aided, or abetted his campaign committee's receipt of the \$600 contribution from Anoka Air Charter, Inc. The Complainant also has failed to establish that Respondent violated the related prohibition contained in Minn. Stat. § 211B.13, subd. 2, which prohibits a person from "knowingly" soliciting, receiving, or accepting any money, property, or other thing of monetary value . . . that is a disbursement prohibited by this section or section 211B.15." The Complainant failed to establish that the Respondent knowingly solicited, received or accepted the \$600 contribution from Anoka Air Charter, Inc.

6. Minn. Stat. § 211B.12 provides as follows:

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. The following are permitted expenditures when made for political purposes:

- (1) salaries, wages, and fees;
- (2) communications, mailing, transportation, and travel;
- (3) campaign advertising;
- (4) printing;
- (5) office and other space and necessary equipment, furnishings, and incidental supplies;
- (6) charitable contributions of not more than \$50 to any charity annually; and
- (7) other expenses, not included in clauses (1) to (6), that are reasonably related to the conduct of election campaigns. In addition, expenditures made for the purpose of providing information to constituents, whether or not related to the conduct of an election, are permitted expenses. Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.

7. The Complainant has failed to establish that the Respondent's expenditure on the insurance for the February 22, 2006, fundraising event violated Minn. Stat. § 211B.12(7). The expenditure on insurance was reasonably related to the conduct of Respondent's campaign.

8. The Complainant has established that the Respondent's expenditures on airplane models did violate Minn. Stat. § 211B.12(7). There was no convincing evidence that the models were originally purchased for a

fundraiser, but even if they were, they were not used for that purpose and they were converted to personal use.

Based upon the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

ORDER

IT IS ORDERED:

That State Senator Michael Jungbauer pay a civil penalty of \$600 by November 30, 2006, for violating Minn. Stat. § 211B.12(7).⁴¹ That in all other respects, the Complaint is dismissed.

Dated: October 20, 2006

/s/ Barbara L. Neilson
BARBARA L. NEILSON
Presiding Administrative Law Judge

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

/s/ Cheryl LeClair-Sommer
CHERYL LECLAIR-SOMMER
Administrative Law Judge

⁴¹ The check should be made payable to: "Treasurer, State of Minnesota" and sent to the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401.

MEMORANDUM

The Complainant failed to establish by a preponderance of the evidence that the Respondent aided or abetted his campaign committee's receipt of the \$600 contribution from Anoka Air Charters, Inc., in violation of Minn. Stat. § 211B.15, subd. 13, or that the Respondent knowingly solicited or received the corporate contribution in violation of Minn. Stat. § 211B.13, subd. 2. There was no credible evidence that the Respondent solicited a corporate contribution or had any knowledge that one may have been made until the August 2006 financial report was prepared. Once alerted to the possibility that the campaign had received a corporate contribution, the Respondent obtained a copy of the check and, upon seeing it, immediately notified the corporation that the campaign could not accept the contribution and refunded the money. Accordingly, those allegations in the Complaint are dismissed.

The Complainant also failed to establish by a preponderance of the evidence that the Respondent's campaign committee's expenditure on insurance for his February 22, 2006, fundraiser was not reasonably related to the conduct of his campaign in violation of Minn. Stat. § 211B.12(7). In fact, the Complainant conceded at the close of the hearing that the insurance payment made by the Jungbauer campaign was a permitted expenditure for purposes of Section 211B.12. Therefore, this allegation in the Complaint is dismissed.

The panel concludes, however, that the Complainant did establish by a preponderance of the evidence that Respondent's expenditures on airplane models violated Minn. Stat. § 211B.12(7). There was conflicting evidence concerning the original purpose for which the models were purchased. The Respondent's former campaign manager, whose duties included organizing fundraising events, was unaware that the campaign had purchased over \$700 in airplane models and had no knowledge of any plans to auction off airplane models at a fundraising event. Moreover, since purchasing the airplane models, the Respondent has given different accounts as to why they were purchased and how they are related to his campaign. When asked by a reporter in early September about the expenditures identified as "miscellaneous spending airplane models" on his campaign finance report, the Respondent first stated that the reference to "airplane models" was simply a mischaracterization in his campaign report possibly caused by the fact that the owner of Historic Sales also owns the hangar in which the fundraiser was held. Later, in response to another reporter's questions and in his September 19, 2006, letter to the Campaign Finance and Public Disclosure Board, the Respondent stated that the airplane models were purchased for a silent auction to be held as part of a fundraiser. During the hearing, Senator Jungbauer suggested that he may, in the alternative, attempt to sell the models on E-Bay. The panel concludes that there was no convincing evidence that the models were originally purchased for a fundraiser, but even if they were, they were not used for that purpose and they were converted to personal use.

Even assuming for the sake of argument that the models were in fact purchased for use at a fundraiser, the Complainant has shown by a preponderance of the evidence that they were not used for that purpose and instead were converted to personal use. Senator Jungbauer had the models in his possession since May of 2006, and never scheduled or held a fundraiser to auction them off in the ensuing four months before the complaint was filed. Moreover, he removed at least some of the models from their packaging in his Senate office and displayed them in airplane hangars. By the date of the hearing, he still had no definite plans for the sale of the airplane models. Thus, a preponderance of the evidence supports a conclusion that the Respondent converted the airplane models to personal use. The Respondent is obligated under Minn. Stat. § 211B.12 to use items purchased with campaign funds in a manner that is reasonably related to the conduct of his campaign. There is no evidence that he has done so.

Having found that the Respondent violated Minn. Stat. § 211B.12(7), with respect to his campaign expenditures on airplane models, the Panel may make one of several dispositions.⁴² The panel may issue a reprimand, may impose a civil penalty of up to \$5,000, and may refer the complaint to the appropriate county attorney for criminal prosecution. In this case, the panel has decided to impose a civil penalty of \$600. The panel concludes that Respondent's violation was made knowingly but that it had no impact on voters. As such, the panel concludes that a civil penalty of \$600 is appropriate.

B.L.N., B.J.H., C.L.S.

⁴² Minn. Stat. § 211B.35, subd. 2.